STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 15, 2013
v	No. 310589 Kalamazoo Circuit Court
WILLARD GATISS PUTMAN, JR., Defendant-Appellant.	LC No. 2011-001461-FC

Before: WHITBECK, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Defendant Willard Gatiss Putman, Jr. appeals of right his jury convictions of two counts of first-degree criminal sexual conduct, MCL 750.520b(2)(b), and five counts of second-degree criminal sexual conduct, MCL 750c(2). The trial court sentenced him to serve concurrent terms of 300 to 900 months in prison for each first-degree offense and to serve 120 to 180 months in prison for each second-degree offense. Because we conclude that there were no errors warranting relief, we affirm.

Because Putman was already an older man during the events at issue, the parties presented evidence and testimony about Putman's medical conditions. Putman's physician testified that Putman had long struggled with various ailments and wore a back brace from 2009 into 2010 after surgery. Testimony also established that Putman consulted with an urologist in September 2006, when he was in his 70s, about getting a vasectomy and replacing his dysfunctional penile implant. Putman had the surgery in December of that same year.

EI, who was Putman's granddaughter and AI's mother, testified that she moved to Putman's property with her children in July 2007. EI stated that her children (Putman's great-grandchildren) were with Putman and his wife frequently—they visited Putman's home at least two or three times per week and often stayed overnight. AI testified that Putman began sexually assaulting her "almost every day" beginning in 2007 or 2008, when she was seven or eight.

In late August 2011, Putman borrowed a camper and took AI and her brother, MI, to a campsite in Kalamazoo County for an eight-day trip; they returned on September 1. EI and other relatives visited throughout the trip during daylight hours. AI told EI that she wanted to leave, but EI made her stay. TC, another of Putman's great-grandchildren, arrived at the campsite early in the week and stayed for the remainder of the trip. The children slept together on one side of the camper and Putman slept on the other side. Curtains separated the sections, but after the first

night, Putman regularly called AI over to his side. AI testified that Putman touched her breasts and genitals with two vibrators, penetrated her vagina with a vibrator, performed cunnilingus on her, penetrated her with his fingers, penetrated her vagina with his penis, and placed his mouth on her breasts, often while playing pornographic movies on a small television. One evening, TC woke, approached Putman's side of the camper, and saw AI lying with Putman under the covers. She said that Putman then touched her breasts and asked her if it felt good.

MI and TC both testified that they saw pornographic materials in the camper and one or two vibrators. At some point Putman had TC and AI use vaginal douches. When they left the campsite, Putman purchased wine and gave it to the children. The night they returned home, AI gave one of her grandfathers a handwritten note relating that Putman had touched her. The grandfather contacted EI the next day. EI eventually called child protective services, who directed her to take AI to a nearby hospital. EI did and they were sent to nurse Phyllis Van Order, who examined AI. Van Order physically examined AI and discovered a bruise and two tears on the inner surface of her anus.

Police officers searched Putman's home and found a bag from an adult store that contained two pornographic movies and lubricant. They searched the camper and found a packet of lubricant. At trial, several family members who visited the campsite testified that the children seemed to be having a good time; they also denied seeing any pornography at Putman's home.

At trial, Putman asked the trial court to preclude his urologist from testifying that Putman told him he wanted to have the surgery because he wished to find a sexual partner who was not his wife. He argued that this testimony was irrelevant and embarrassing. Putman's trial lawyer also repeatedly challenged Van Order's testimony concerning AI's statements about the abuse as improper hearsay. The trial court permitted both witnesses to testify over these objections.

On appeal, Putman argues that he did not receive a fair trial. Specifically, he contends that the trial court should have prevented his urologist from testifying about his decision to get a vasectomy and to replace his penile implant. He also argues that it was improper for Van Order to testify about AI's reports of sexual abuse. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Roper*, 286 Mich App 77, 90; 777 NW2d 483 (2009). However, this Court reviews de novo whether a rule or statute precludes admission. *Id.* at 91.

Generally, all relevant evidence is admissible. See MRE 401; MRE 402. Evidence concerning a defendant's character is, however, not admissible to prove that the defendant acted in conformity with his or her character. MRE 404(a); *Roper*, 286 Mich App at 91. Similarly, a prosecutor cannot present evidence that the defendant engaged in other bad acts in order to show that the defendant has a propensity to commit bad acts. MRE 404(b)(1). Even if evidence is relevant to something other than character, it "may still be inadmissible if the probative value of the evidence 'is substantially outweighed by the danger of unfair prejudice . . . .'" *People v Yost*, 278 Mich App 341, 407; 749 NW2d 753 (2008), quoting MRE 403 and citing *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993).

Here, Putman argues that the urologist's testimony was impermissible evidence of a prior bad act—namely, his "dishonest behavior toward his wife." However, the challenged evidence was his statement that he intended to find a sexual partner outside his marriage and a statement of intent is not evidence of a particular act. Thus, MRE 404(b) does not apply. Moreover, this evidence was relevant for a purpose other than to show bad character.

The charges in this case included acts of penile penetration. Putman, in part, challenged the prosecutor's case by presenting evidence that he was medically infirm, which gave the impression that he was incapable of such sexual acts. The statement that he intended to find a sexual partner and wanted his penile implant corrected to permit sexual function is evidence that, despite his ailments, Putman remained physically capable of a full range of sexual conduct and continued to seek fulfillment of his sexual desires. Therefore, the proffered testimony was relevant to prove something other than character. While his statement of intent might implicate character in a broader sense, the very essence of this case was an allegation that he had illicit sexual relations. In addition, because there was evidence that suggested that Putman might be incapable of performing the charged sexual acts despite AI's testimony to the contrary, whether Putman had the physical capability to engage in the acts was highly relevant. Therefore, on this record, we cannot conclude that the probative value of this testimony was substantially outweighed by the danger of unfair prejudice. MRE 403; *Roper*, 286 Mich App at 106.

The trial court did not abuse its discretion by permitting the urologist's testimony.

Putman next argues that the trial court erred when it permitted Van Order to offer inadmissible hearsay testimony. "'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Hearsay is generally not admissible, unless it is offered under one of the exceptions. See MRE 802. One such exception is for statements made for purposes of medical treatment or diagnosis, which includes statements "describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment." MRE 803(4). "[T]he identification of the assailant is necessary to adequate medical diagnosis and treatment" of the patient. *People v Meeboer (After Remand)*, 439 Mich 310, 322; 484 NW2d 621 (1992). "Particularly in cases of sexual assault in which the injuries might be latent . . . a victim's complete history and a recitation of the totality of the circumstances of the assault are properly considered to be statements made for medical treatment." *People v Mahone*, 294 Mich App 208, 215; 816 NW2d 436 (2011).

In this case, the factors relevant to assessing whether the exception applies favored the admission of this testimony. See *Meeboer*, 439 Mich at 324-325. Van Order testified that AI used the words "boobs" and "dingy," showing the use of terminology not unexpected for a child of similar age. Van Order also suggested that AI was sent to the nurse for examination according to the hospital's procedures, indicating that AI's diagnosis or treatment continued with Van Order's examination. This examination also revealed AI to still be suffering from the effects of a possible sexual assault. Additionally, the examination occurred long before trial, and the person AI identified as her assailant was clearly of close relation to her. All of these aspects support the admissibility of AI's statements to Van Order. *Id.* Additionally, though EI may have taken AI to the hospital at the direction of Child Protective Services, the record shows that this did not

extinguish the medical character of the examination. See *People v Van Tassel (On Remand)*, 197 Mich App 653, 661; 496 NW2d 388 (1992); *Meeboer*, 439 Mich at 335. Therefore, the trial court did not abuse its discretion by admitting this testimony under the hearsay exception.

Even if we were to conclude that it was error to admit this testimony, we do not believe that the error would warrant relief. AI gave compelling testimony against Putman, which testimony was corroborated by other significant evidence. One witness who lived in Putman's home, but was not related to him, testified that he found a vibrator package in Putman's Jeep and later saw him burning material in a stove after AI made her allegations. One of Putman's daughters testified that she found a pornographic document in the same Jeep after the camping trip and police officers discovered pornographic DVDs in his home along with lubrication in the camper and house. Thus, assuming that it was error to admit the hearsay testimony identifying Putman, it does not affirmatively appear more probable than not that the admitted testimony was outcome determinative; accordingly, Putman would still not be entitled to any relief. See *Peoplev Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

There were no errors warranting relief.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Michael J. Kelly